

IN MEMORY OF TERRENCE L.
BARNICH

HON. MARK STEVEN KIRK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. KIRK. Madam Speaker, I rise today to honor the life of Terrence L. Barnich. Terry served as Chairman of the Illinois Commerce Commission (ICC) in the early nineties, and spent the last two years as Deputy Director of the Iraq Transition Assistance Office in Baghdad. Terry died on Memorial Day after his convoy was hit by a roadside bomb on the outskirts of Fallujah.

Terry was appointed Chairman of the ICC by Gov. Jim Thompson in 1989, serving for three years before joining the private sector. In 2007 he took a leave of absence from his job as CEO of Paradigm Resources Group to spend a year working with the State Department in Baghdad. After that year, Terry volunteered to stay in Iraq to continue his work helping the Iraqis build modern public utility systems. He embodied the American commitment to the people of Iraq, and his work was helping us fulfill that commitment.

Terry died after inspecting a new wastewater treatment facility that will provide essential services to Fallujah and Anbar Province. His patriotism and love of his work are evident in a quote he gave a Chicago newspaper shortly after he arrived in Baghdad. He said:

"To those back home who say the Iraqi experience has made the Iraqis unready or incapable for democracy, I say come work with me. I deal with Iraqis who daily brave physical hardship, violence and threats of violence to make their contribution to building a government that deserves the consent of the governed."

Funeral services were held today in Chicago, and I hope my colleagues will join me in sending our condolences to Terry's family as we remember his dedication to public service.

IN HONOR OF LARRY CAVITT'S 40
YEARS OF TEACHING EXCELLENCE

HON. PETE SESSIONS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. SESSIONS. Madam Speaker, I rise today to honor a teaching legend, Mr. Larry Cavitt and to celebrate his forty years of dedicated service at St. Mark's School of Texas. I am proud to represent St. Mark's in the 32nd Congressional District of Texas.

Mr. Cavitt first joined St. Mark's faculty on August 28, 1969 after receiving his M.A. from Southern Methodist University. In his current role, he serves as the 5th grade humanities teacher and senior class advisor. During his tenure at St. Mark's, he has also taught 7th, 8th, and 9th grade Social Studies, 8th grade Humanities, U.S. History, and Advanced Placement Law and Government. Outside of the classroom, members of the basketball and baseball team know him as "coach." In his forty years of service, he has helped shaped young impressionable minds, providing them a firm educational foundation for success. He al-

ways encourages his students to chase their dreams and I know these young men have greatly benefitted from his teaching, wisdom, and insight. St. Mark's is a successful institution because of dedicated and caring teachers such as Mr. Cavitt.

I admire him for his passion for teaching and ask my colleagues to join me in expressing our gratitude for his continued service. I congratulate Mr. Cavitt on reaching his forty-year milestone and wish him all the best.

FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009

SPEECH OF

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 18, 2009

Mr. BERMAN. Madam Speaker, I rise today in support of the Fraud Enforcement & Recovery Act of 2009. I want to specifically address the language in this bill that will strengthen the provisions of our Nation's most effective fraud-fighting tool, the federal False Claims Act. With our Nation spending hundreds of billions of dollars to revitalize our faltering economy, now is the time to plug the loopholes that have been created in the False Claims Act over the last quarter century. Now is the time to update this law to ensure that it reaches the modern fraud schemes that are draining our public fisc with impunity. As one of the authors of both the 1986 False Claims Act Amendments and the relevant language in S. 386 which we consider today, I submit this statement to clarify the true intent of the False Claims Act and to send a clear message that all government funds should be protected from fraud.

I. HISTORY OF THE FALSE CLAIMS ACT

Before I get into the provisions of the bill we are considering today, Madam Speaker, I'd like to provide some background on the False Claims Act, how it came to be and how it has been amended in the past.

Congress enacted the False Claims Act in 1863, in response to complaints about "the frauds and corruptions practiced in obtaining pay from the Government during the [Civil] War." Proposed by President Lincoln, the legislation offered private citizens a reward if they assisted the Government in combating fraud. The sponsor of the original False Claims Act explained that the statute, "offers, in short, a reward to the informer who comes into court and betrays his coconspirator, if he be such; but it is not confined to that class."

The 1863 Act authorized private individuals, called "qui tam relators," to bring lawsuits on behalf of the United States to prosecute fraud against the Government and to recover funds that were wrongfully obtained. The Act provided for double damages and a \$2,000 civil penalty per false claim, and private individuals who successfully pursued claims under the Act were entitled to half of the Government's recovery. The Act did not authorize the Government to intervene in the private individual's case, nor did it preclude qui tam actions based upon the source of the relator's information.

Nearly eighty years later, in the midst of World War II, Attorney General Francis Biddle requested that Congress make changes to the

False Claims Act that would prevent parasitic lawsuits. Biddle was concerned that qui tam complaints were being filed based solely on information contained in criminal indictments. Biddle argued that such cases contributed nothing new and could interfere with the Government's criminal prosecutions. So, he urged Congress to repeal the authorization for qui tam actions.

The Senate and House of Representatives each considered Attorney General Biddle's request, and the House went so far as to pass a bill, H.R. 1203, proposing repeal of the False Claims Act's qui tam provisions. The Senate demurred. The House Judiciary Committee then considered legislation providing that jurisdiction would be barred on qui tam suits that were based on information in the possession of the Government, unless the relator was an original source of that information. Without explanation, the resulting conference report dropped the reference to "original sources."

The 1943 amendments changed the False Claims Act in several ways. Most significantly, these amendments authorized the Department of Justice to take over cases initiated by relators. The 1943 amendments required relators to submit all of their supporting evidence to the Department of Justice at the time the relator filed his complaint and gave the Department sixty days to decide whether or not to intervene and take exclusive control of the suit. If the Government elected to intervene, the relator would have no role in the case and no voice in its resolution.

The 1943 amendments also included a "government knowledge bar," which deprived courts of jurisdiction over qui tam actions that were "based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought." The 1943 amendments also significantly reduced the amount of the relator's share of any recovery. In fact, under the 1943 amendments, relators were not assured of a minimum recovery at all. The amendments provided that if the Government prosecuted the suit, the court could award the informer "fair and reasonable compensation" not to exceed 10-percent of the proceeds. If the Government did not intervene, the informer's award could not exceed 25-percent of the proceeds.

These changes put the False Claims Act into hibernation. By the 1980s, it had become evident that the False Claims Act was no longer an effective tool against fraud. In particular, some courts, for example in *United States ex rel. State of Wis. (Dept. of Health and Social Services) v. Dean*, 729 F.2d 1100 (7th Cir. 1984), had broadly interpreted the government knowledge bar adopted in 1943, holding that the bar precluded all qui tam cases involving information already known to the Government, even when the qui tam relator had been the source of that information.

Additionally, the changes to the amount of the relator's share undermined the Act's usefulness. Individuals with information about fraud against the Government were far less likely to become relators without some guarantee that they would be rewarded if they prevailed, particularly since relators often exposed fraud by their employers and were terminated from their jobs as a result. The 1943 amendments did not provide relators with an adequate incentive to bring qui tam actions. Consequently, from 1943 to 1986, fewer than